

Introduced by Senator Aanestad

February 19, 2010

An act to add Sections 22869.5 and 22917 to the Government Code, and to amend Sections 17072, 17131.4, 17131.5, 17215, 17215.1, 17215.4, and 19184 of, and to add Sections 17138.5, 17138.6, and 17216 to, the Revenue and Taxation Code, relating to health care, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1262, as introduced, Aanestad. High deductible health plans: health savings accounts.

Under the Public Employees' Medical and Hospital Care Act, the Board of Administration of the Public Employees' Retirement System contracts for and administers health care benefit plans for public employees and annuitants. Existing state and federal income tax laws allow a deduction for contributions to a qualifying medical savings account by a taxpayer who is covered under a high deductible health plan, as defined. Money within this type of account may be used to pay for qualified medical expenses, as defined.

This bill would require the board to offer a high deductible health plan, as defined in the federal tax law, and a Health Savings Account option to public employees and annuitants, as specified. The bill would establish the Public Employees' Health Savings Fund, a continuously appropriated trust fund within the State Treasury, for payment of qualified medical expenses of eligible employees and annuitants who elect to enroll in the high deductible health plan and participate in the Health Savings Account option, and would require those employees and annuitants, and their employers, to make specified contributions to that fund, thereby making an appropriation.

The Personal Income Tax Law authorizes various deductions in computing income subject to taxation.

This bill would also allow a deduction in connection with Health Savings Accounts in conformity with federal law. In general, the deduction would be an amount equal to the aggregate amount paid in cash during the taxable year by, or on behalf of, an eligible individual, as defined, to a Health Savings Account of that individual, as provided. This bill would also provide related conformity to that federal law with respect to treatment of the account as a tax-exempt trust, the allowance of rollovers from Archer Medical Savings Accounts to a Health Savings Account, and penalties in connection therewith.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22869.5 is added to the Government
2 Code, to read:

3 22869.5. (a) The board shall offer a Health Savings Account
4 option to all employees and annuitants. In addition to the basic
5 health benefit plans described in Sections 22830 and 22850, and
6 notwithstanding any other provision of this part, the board shall
7 approve at least one high deductible health plan, as defined in
8 Section 223(c)(2) of the Internal Revenue Code.

9 (b) The design and administration of the Health Savings Account
10 option shall comply with the standards provided in Section 223 of
11 the Internal Revenue Code and any other applicable revenue
12 procedures or provisions of the Internal Revenue Code and the
13 Revenue and Taxation Code.

14 (c) (1) An employee or annuitant who qualifies as an eligible
15 individual, as defined in Section 223(c)(1)(A) of the Internal
16 Revenue Code, and who elects to participate in the Health Savings
17 Account option shall enroll in a high deductible health plan offered
18 by the board and shall contribute the total cost per month of the
19 benefit coverage afforded him or her under that plan less the portion
20 thereof to be contributed by the employer.

21 (2) The employee or annuitant shall also designate an additional
22 amount to be deducted from his or her salary or retirement
23 allowance for qualified medical expenses. The amount shall be no
24 less than fifty dollars (\$50) per month. The amount shall be

1 deposited into the Public Employees' Health Savings Fund and
2 shall be credited to a nominal, interest-bearing account in the name
3 of the employee or annuitant.

4 (3) For purposes of this section, "qualified medical expenses"
5 means those expenses as defined in Section 223(d)(2) of the
6 Internal Revenue Code.

7 (d) (1) The employer of an employee or annuitant who elects
8 to participate in the Health Savings Account option shall contribute
9 a portion, pursuant to Article 7 (commencing with Section 22870)
10 or Article 8 (commencing with Section 22890), of the cost of
11 providing the benefit coverage under the high deductible health
12 plan.

13 (2) The employer shall also contribute an amount equal to the
14 difference between the amount contributed pursuant to paragraph
15 (1) and the weighted average of the health benefit plan premiums
16 the employer would have paid if the employee or annuitant had
17 enrolled in a plan other than the high deductible health plan, and
18 that amount shall be deposited into the Public Employees' Health
19 Savings Fund and shall be credited to a nominal account in the
20 name of the employee or annuitant.

21 (e) The limit on contributions made to an employee's or
22 annuitant's Health Savings Account by the employee, annuitant,
23 or the employer of the employee or annuitant shall not exceed the
24 maximum limit set by the Internal Revenue Code for a Health
25 Savings Account.

26 (f) Moneys credited to the employee's or annuitant's nominal
27 account in the Public Employees' Health Savings Fund shall be
28 disbursed to pay qualified medical expenses incurred by the
29 employee or annuitant, in accordance with Section 223 of the
30 Internal Revenue Code.

31 (g) The board shall adopt regulations necessary to implement
32 this section.

33 SEC. 2. Section 22917 is added to the Government Code, to
34 read:

35 22917. (a) There is in the State Treasury a Public Employees'
36 Health Savings Fund, the purpose of which is to pay the qualified
37 medical expenses of holders of Health Savings Accounts pursuant
38 to Section 22869.5 and pursuant to Section 223 of the Internal
39 Revenue Code. The board shall have the exclusive control of the
40 administration and investment of the fund.

(b) The Public Employees' Health Savings Fund shall consist of moneys deducted from the salary or retirement allowance of an employee or annuitant, and moneys contributed by the employee's or annuitant's employer, for qualified medical expenses pursuant to Section 22869.5. Those moneys shall earn interest income.

(c) The board may invest funds in the Public Employees' Health Savings Fund pursuant to the law governing its investment of the retirement fund, subject to the limitations contained in Section 223 of the Internal Revenue Code. Income, of whatever nature, earned on the fund during any fiscal year shall be credited to the fund.

(d) Notwithstanding Section 13340, the Public Employees' Health Savings Fund is continuously appropriated, without regard to fiscal years, to reimburse qualified medical expenses of holders of Health Savings Accounts.

(e) The Legislature finds and declares that the Public Employees' Health Savings Fund is a trust fund held for the exclusive benefit of employees and annuitants who elect the Health Savings Account option pursuant to Section 22869.5.

SEC. 3. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) Section 62(a)(2)(D) of the Internal Revenue Code, relating to certain expenses of elementary and secondary school teachers, shall not apply.

(c) The deduction allowed by Section 17216, relating to Health Savings Accounts, shall be allowed in computing adjusted gross income. This subdivision shall apply only to each taxable year beginning on or after January 1, 2010.

SEC. 4. Section 17131.4 of the Revenue and Taxation Code is amended to read:

17131.4. (a) Section 106(d) of the Internal Revenue Code, as added by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173), relating to contributions to health savings accounts, shall not apply.

(b) This section shall apply only to taxable years beginning on or after January 1, 2005, and before January 1, 2010.

1 SEC. 5. Section 17131.5 of the Revenue and Taxation Code
2 is amended to read:

3 17131.5. (a) Section 125(d)(2)(D) of the Internal Revenue
4 Code, *as added by Section 1201 of the Medicare Prescription*
5 *Drug, Improvement, and Modernization Act of 2003 (Public Law*
6 *108-173)*, relating to the exception for health savings accounts,
7 shall not apply.

8 (b) *This section shall apply only to taxable years beginning on*
9 *or after January 1, 2005, and before January 1, 2010.*

10 SEC. 6. Section 17138.5 is added to the Revenue and Taxation
11 Code, to read:

12 17138.5. For each taxable year beginning on or after January
13 1, 2010, Section 106 of the Internal Revenue Code, as amended
14 by Section 1201 of the Medicare Prescription Drug, Improvement,
15 and Modernization Act of 2003 (Public Law 108-173), relating to
16 Health Savings Accounts, shall apply, except as otherwise
17 provided.

18 SEC. 7. Section 17138.6 is added to the Revenue and Taxation
19 Code, to read:

20 17138.6. For each taxable year beginning on or after January
21 1, 2010, Section 125 of the Internal Revenue Code, as amended
22 by Section 1201 of the Medicare Prescription Drug, Improvement,
23 and Modernization Act of 2003 (Public Law 108-173), relating to
24 Health Savings Accounts, shall apply, except as otherwise
25 provided.

26 SEC. 8. Section 17215 of the Revenue and Taxation Code is
27 amended to read:

28 17215. (a) Section 220(a) of the Internal Revenue Code,
29 relating to deduction allowed, is modified to provide that the
30 amount allowed as a deduction shall be an amount equal to the
31 amount allowed to that individual as a deduction under Section
32 220 of the Internal Revenue Code, relating to medical savings
33 accounts, on the federal income tax return filed for the same taxable
34 year by that individual.

35 (b) Section 220(f)(4) of the Internal Revenue Code, relating to
36 additional tax on distributions not used for qualified medical
37 expenses, is modified by substituting “10 percent” in lieu of “15
38 percent.”

39 (c) *Section 220(f)(5) of the Internal Revenue Code, as amended*
40 *by Section 1201(c) of the Medicare Prescription Drug,*

1 *Improvement, and Modernization Act of 2003 (Public Law*
2 *108-173), relating to permitted rollovers from Archer Medical*
3 *Savings Accounts, shall apply, except as otherwise provided.*

4 *(d) The amendments made to this section by the act adding this*
5 *subdivision shall apply only to each taxable year beginning on or*
6 *after January 1, 2010.*

7 SEC. 9. Section 17215.1 of the Revenue and Taxation Code
8 is amended to read:

9 17215.1. (a) Section 220(f)(5) of the Internal Revenue Code,
10 *as added by Section 1201 of the Medicare Prescription Drug,*
11 *Improvement, and Modernization Act of 2003 (Public Law*
12 *108-173), relating to rollover contributions, shall not apply.*

13 *(b) This section shall apply only to taxable years beginning on*
14 *or after January 1, 2005, and before January 1, 2010.*

15 SEC. 10. Section 17215.4 of the Revenue and Taxation Code
16 is amended to read:

17 17215.4. (a) Section 223 of the Internal Revenue Code, *as*
18 *added by Section 1201 of the Medicare Prescription Drug,*
19 *Improvement, and Modernization Act of 2003 (Public Law*
20 *108-173), relating to health savings accounts, shall not apply.*

21 *(b) This section shall apply only to taxable years beginning on*
22 *or after January 1, 2005, and before January 1, 2010.*

23 SEC. 11. Section 17216 is added to the Revenue and Taxation
24 Code, to read:

25 17216. For each taxable year beginning on or after January 1,
26 2010, all of the following apply:

27 (a) Section 223 of the Internal Revenue Code, as added by
28 Section 1201 of the Medicare Prescription Drug, Improvement,
29 and Modernization Act of 2003 (Public Law 108-173), relating to
30 Health Savings Accounts, shall apply, except as otherwise
31 provided.

32 (b) Section 223(e)(1) of the Internal Revenue Code, as added
33 by Section 1201 of the Medicare Prescription Drug, Improvement,
34 and Modernization Act of 2003 (Public Law 108-173), shall be
35 modified by substituting the phrase “Section 17651” for the phrase
36 “Section 511 (relating to imposition of tax of unrelated business
37 income of charitable, etc., organizations),” contained therein.

38 (c) Section 223(f)(4)(A) of the Internal Revenue Code, as added
39 by Section 1201 of the Medicare Prescription Drug, Improvement,
40 and Modernization Act of 2003 (Public Law 108-173), shall be

1 modified by substituting “2½ percent” for “10 percent,” contained
2 therein.

3 SEC. 12. Section 19184 of the Revenue and Taxation Code is
4 amended to read:

5 19184. (a) A penalty of fifty dollars (\$50) shall be imposed
6 for each failure, unless it is shown that the failure is due to
7 reasonable cause, by any person required to file who fails to file
8 a report at the time and in the manner required by any of the
9 following provisions:

10 (1) Subdivision (c) of Section 17507, relating to individual
11 retirement accounts.

12 (2) Section 220(h) of the Internal Revenue Code, relating to
13 medical savings accounts for taxable years beginning on or after
14 January 1, 1997.

15 (3) *Section 223(h) of the Internal Revenue Code, as added by*
16 *Section 1201 of the Medicare Prescription Drug, Improvement,*
17 *and Modernization Act of 2003 (Public Law 108-173), relating to*
18 *Health Savings Accounts.*

19 ~~(3)~~

20 (4) Subdivision (b) of Section 17140.3 or subdivision (b) of
21 Section 23711 relating to qualified tuition programs.

22 ~~(4)~~

23 (5) Subdivision (e) of Section 23712, relating to Coverdell
24 education savings accounts.

25 (b) (1) Any individual who:

26 (A) Is required to furnish information under Section 17508 as
27 to the amount designated nondeductible contributions made for
28 any taxable year, and

29 (B) Overstates the amount of those contributions made for that
30 taxable year, shall pay a penalty of one hundred dollars (\$100) for
31 each overstatement unless it is shown that the overstatement is due
32 to reasonable cause.

33 (2) Any individual who fails to file a form required to be filed
34 by the Franchise Tax Board under Section 17508 shall pay a
35 penalty of fifty dollars (\$50) for each failure unless it is shown
36 that the failure is due to reasonable cause.

37 (c) Article 3 (commencing with Section 19031) of this chapter
38 (relating to deficiency assessments) shall not apply in respect of
39 the assessment or collection of any penalty imposed under this
40 section.

1 (d) *The amendments made to this section by the act adding this*
2 *subdivision shall apply only to each taxable year beginning on or*
3 *after January 1, 2010.*

4 SEC. 13. (a) The amendments made by this act to Sections
5 17072, 17215, and 19184 of the Revenue and Taxation Code
6 incorporate, by reference, the provisions of Section 1201 of the
7 Medicare Prescription Drug, Improvement, and Modernization
8 Act of 2003 (Public Law 108-173), which added Section 223 of
9 the Internal Revenue Code to Part VII of Subchapter B of Chapter
10 1 of Subtitle A of the Internal Revenue Code and amended Sections
11 62, 106, 125, and 220 of the Internal Revenue Code, and shall
12 apply retroactively to taxable years beginning on or after January
13 1, 2010.

14 (b) The Legislature finds and declares that this act fulfills a
15 statewide public purpose because of the following:

16 The State of California has not yet conformed its state income
17 tax law to the provisions of Section 1201 of the Medicare
18 Prescription Drug, Improvement, and Modernization Act of 2003
19 (Public Law 108-173). As a result, the taxpayers who have
20 converted their Archer Medical Savings Accounts into Health
21 Savings Accounts pursuant to Sections 220 and 223 of the Internal
22 Revenue Code may be subject to tax and penalties under state, but
23 not federal, income tax laws. This act provides necessary relief
24 from the tax and penalties to the taxpayers who have converted
25 their Archer Medical Savings Accounts into Health Savings
26 Accounts in taxable years beginning on or after January 1, 2010.

27 (c) If, by the operation of any law or rule of law, including res
28 judicata, a refund or credit of any overpayment of tax resulting
29 from the retroactive application of the amendments made to
30 Sections 17072, 17215, and 19184 of the Revenue and Taxation
31 Code by this act is prevented at any time before the close of the
32 two-year period beginning on the effective date of this act, that
33 refund or credit may nonetheless be made or allowed, provided
34 that the claim for refund or credit is filed before the close of that
35 period.